



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/154654

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Trempealeau County Department of Social Services in regard to FoodShare benefits (FS), a telephonic hearing was held on February 03, 2014, at Whitehall, Wisconsin.

The issue for determination is whether the county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$2,396 to the petitioner during the period of October 1, 2012 through January 31, 2013, due to failure to timely report self-employment income of her son's father ([REDACTED] [REDACTED]) for a FS group of four resulting in reduced household FS benefits during the entire overpayment period.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Tom Miller, ES Supervisor
Trempealeau County Department of Social Services
36245 Main St.
PO Box 67
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County who resided with her daughter, her son, and her son's father, [REDACTED] [REDACTED].

2. The petitioner received FoodShare (FS) benefits for a household of four.
3. During her July 31, 2012 FS renewal application, petitioner did not report any self-employment income for [REDACTED].
4. On or about August 1, 2012, the county agency sent a notice to the petitioner approving her FS benefits, and indicated that petitioner must report to the county agency her FS household's income if that income increased to over \$1,920 per month.
5. On January 2, 2013, petitioner submitted a FS six month report form (SMRF) to the county agency which reported that [REDACTED] was self-employed selling vehicles. On January 14, 2013, petitioner submitted SMRFs to the county for each of the months of July through December, 2012. Those SMRFs confirmed that [REDACTED] [REDACTED] had monthly net income of \$2,265 per month for each of those months.
6. If petitioner had reported [REDACTED]'s monthly self-employment income, then that increased household income would have reduced the petitioner's FS benefits for the entire period of October 1, 2012 through January 31, 2013.
7. The petitioner did not dispute [REDACTED]'s monthly net income of \$2,265 per month for the period of October, 2012 through January, 2013.
8. The county agency sent a December 10, 2013 FS Overpayment Notice to the petitioner which stated that petitioner received a FS overpayment of \$2,396 during the period of October 1, 2012 through January 31, 2013, due to petitioner's failure to timely report [REDACTED] [REDACTED]' monthly self-employment income to the county agency.
9. The county agency's December 11, 2013 FS overpayment worksheets indicates how the \$2,396 FS overpayment was correctly calculated.

DISCUSSION

All FS applicants and recipients have a duty to accurately and truthfully report income to the county agency. 7 C.F.R. §273.12, "Reporting requirements." Furthermore, a FS recipient has the duty to cooperate in provide accurate and true income information on both his/her FS application and during later reviews. The FS recipient is also required to cooperate with the county agency in verifying all household income in order for the county agency to accurately determine a FS application or recipient's FS eligibility and benefits. 7 C.F.R. §273.2(d), "Household cooperation." As explained in the above Findings of Fact, petitioner failed to accurately and timely report [REDACTED]'s self-employment income to the county agency for the period of October, 2012 through January, 2013.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2)(emphasis added).

During the February 3, 2014 hearing, the county agency representatives, ES Supervisor Tom Miller and ESS Bob Uebele presented a well-organized case, and established that the petitioner failed to timely report [REDACTED] [REDACTED]' monthly self-employment income during her July 31, 2012 FS renewal or report that increased household income as required by September 10, 2012. As a result, [REDACTED]'s self-employment income was not budgeted as income to the FS household in determining the petitioner's FS household eligibility and benefits during the period of October, 2012 through January, 2013. The county agency established that petitioner's net household income was substantially above the income budgeted by the county (due to petitioner's failure to report self-employment income) resulting in the reduction in petitioner's accurate FS benefits during the entire FS overpayment period. The petitioner did not contest that she had received FS benefits during the period of October 1, 2012 through January 31, 2013.

Furthermore, petitioner did not offer any evidence to refute the accuracy of the county's FS overpayment determination of \$2,396.00 for that overpayment period.

During the hearing, petitioner alleged that she was "confused" about at what income level she was required to report in increase in her household income to the county agency. However, such allegation is not entirely credible as the county agency on about August 1, 2012 did send a notice to petitioner approving her FS benefits, and indicated that petitioner must report to the county agency her FS household's income if that income went over \$1,920 per month. The county responded that petitioner had been informed of the reporting requirements regarding increases in income to her FS household.

The petitioner generally contended that it was unfair that the county agency was seeking recovery of the overpayment. However, controlling federal regulation requires establishment of a claim against a household for a FS overpayment regardless of whose error caused the overpayment to occur: **"The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . ."** 7 C.F.R. §273.18(a); see also FoodShare Wisconsin Handbook, Appendices 7.3.1.9 and 7.3.1.1. Accordingly, the county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$2,396 to the petitioner during the period of October 1, 2012 through January 31, 2013, due to failure to timely report self-employment income of her son's father ([REDACTED] [REDACTED]) for a FS group of four resulting in reduced household FS benefits during the entire overpayment period.

CONCLUSIONS OF LAW

The county agency is correctly seeking recovery of a FoodShare (FS) overpayment of \$2,396 to the petitioner during the period of October 1, 2012 through January 31, 2013, due to failure to timely report self-employment income of her son's father ([REDACTED] [REDACTED]) for a FS group of four resulting in reduced household FS benefits during the entire overpayment period.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of February, 2014

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 17, 2014.

Trempealeau County Department of Soc Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability